

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

**CONDUCT OF TRIAL BEFORE
JUDGE S. E. CASELLAS**

STANDING ORDER

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Jury Selection

The Court uses the struck jury system. The procedures of the struck jury system are aimed at giving counsel the most favorable circumstance for exercising peremptory challenges. I direct counsel to exercise their peremptory challenges in writing and *simultaneously*. Once the written peremptory challenges have been delivered to the Courtroom Clerk by counsel, she strikes from the record the names of all those panelists who have been challenged by one or the other of the parties. I then excuse from the jury box those in the box who have been challenged. I fill the first empty seat in the jury box with the lowest numbered unchallenged panelist and fill each other vacant seat by seating in order the lowest numbered unchallenged panelists.

If I have decided to use *alternate jurors*, I increase the number of peremptory challenges by the number of additional challenges provided for by the rules. For example, if one or two alternates are used in a criminal case, I give each side one additional peremptory challenge. This means that in a criminal prosecution where I have elected to have one or two alternates, the government is given a total of seven and the defense is given a total of eleven peremptory challenges. *All of these challenges are exercised at one time*. After filling the first twelve seats in the box for the regular jury, I fill the alternate seats in order with the lowest numbered unchallenged panelists.

Conduct of Trial

Attorneys should arrive for each hearing sufficiently in advance of the time set to be ready to proceed promptly.

Undisposed of pretrial issues will be resolved at or prior to the beginning of the trial. However, it is *the responsibility of counsel* to bring them to the attention of the Court.

No paper may be delivered to the Court (or handed up to the bench during trial) unless it has been served on opposing counsel.

The Court attempts to start on time and expects counsel, witnesses and parties to be available when needed. ***Do not run out of witnesses.*** Witnesses will be taken out of order if the next witness is unavailable, and doctors' testimony will be taken, whenever possible, at a time convenient to the doctor, even if it means interrupting the testimony of another witness. Failure to have witnesses available during trial may result in preclusion of their testimony.

Attorneys should treat all witnesses *in a civil and courteous manner* always avoiding disparaging personal remarks and acrimony.

Attorneys speaking on the record should stand and address the Court rather than opposing counsel. There is to be no cross-discussion on the record. Any attorney is free at any time, without asking leave, to walk to the adversary's table to confer privately with opposing counsel. Such discussion shall not be audible to the jury. Offers to stipulate shall not be made in the presence of the jury, unless they have previously been agreed to informally between the attorneys in the absence of the jury. Stipulations may be oral, but preferably should be in writing and received as an exhibit.

Questions and arguments are delivered from the lectern. Counsel may approach the Clerk without asking leave whenever it is necessary. If counsel is standing near the witness for the purpose of pointing something out on an exhibit, opposing counsel may also be present to observe first hand what is being pointed out.

Objections

To the extent possible, anticipate questions as to the admissibility of evidence, and provide the Court with authorities as far in advance as possible.

Objections are to be limited to "objections" and the number of the Federal Rule of Evidence relied upon (e.g., "Objection; Rule 403"). State the grounds for an objection briefly and in a nonargumentative way. If additional argument is required, request a bench conference. After objecting, wait for a ruling before proceeding. If not satisfied with the ruling, raise it at the next recess. Only if counsel believes it cannot wait for a recess should counsel request to approach the bench for a conference with counsel for all parties and the court reporter present. The Court attempts to minimize the number of bench conferences; please save for a recess any matters that do not require immediate resolution.

Court Reporter

Please respect the Court Reporter's function. Ask permission of the Court to go off the record. If the spelling of names of people, places or things is unusual, give a list of such words to the Court Reporter at the start of trial. Speak distinctly; do not speak while someone else is speaking. When referring to an exhibit, be sure to mention it by number or letter so that the record is clear as to what is being discussed. Answers given

by a witness relating to distances in the Courtroom or objects before the witness should be clarified by a statement for the record so that the transcript will convey a clear report of what took place at trial.

When depositions or documents are read, the reader should proceed slowly enough for the court reporter to record what is being said. Depositions are to be read by stating the word "Question" and then reading the question, then stating the word "Answer" and reading the answer.

Interpreter

Counsel should inform the courtroom clerk ahead of time (at least the day before) which witnesses will require an Interpreter. ***Please respect the Interpreter's function.***

Exhibits

Counsel are responsible for marking their own exhibits. Counsel must give a copy of each exhibit to the Court before using it at trial. In civil trials, counsel must exchange copies of their trial exhibits before trial begins (see instructions for preparing the joint pretrial order).

The Court copy of the premarked exhibits should be assembled sequentially in a notebook and tabbed or if a party prefers, each exhibit will be placed in a separate manila folder with the number or letter visible on the lip, and the folder will be placed in a suitable container or box for ready reference. Each counsel will provide to the court two copies of his or her final exhibit list. Counsel shall also provide copies to the Judge of any depositions which are intended to be offered, in whole or part, into evidence. Depositions are ***not*** generally to be offered in their entirety. Except in the rare instance

where all the testimony is relevant, copy the relevant pages only, staple the extracts from each deposition, and offer each as an exhibit.

Except where otherwise directed by the Court, each side of the case keeps track of its own exhibits. While an exhibit is being used, it shall be left in the possession of the Courtroom Clerk.

At the end of the trial, all exhibits received in evidence, except for dangerous items such as narcotics, are automatically sent into the jury room at the commencement of jury deliberations. A copy of the Indictment containing those matters being submitted for verdict is also sent into the jury room, but pleadings in civil cases are not. Copies of the Court's instructions are also provided to the Jury. Counsel are responsible to see that those things sent in to the jury are genuine and actually have been received in evidence.

Exhibits that contain extraneous matter, not admissible, should be redacted prior to trial, and surplus writing on the back of photographs, etc., should be obscured. The Court will not be delayed by such matters during trial.

Neither counsel nor a witness may read from exhibits not in evidence. Counsel may publish to the jury or read from exhibits that are in evidence, upon obtaining leave of the Court. Blow-ups, etc. may be used with prior permission. Witnesses, except for physicians, should not be asked to read exhibits.

When examining a witness about a group of documents, counsel shall avoid delay by having all documents readily available for such examination.

Interrogation

When interrogating witnesses, counsel shall do so *from the lectern* provided for this purpose and avoid wandering about in the well. ***Counsel is not to approach a witness for any reason without leave of Court.***

Counsel shall use a ***question and answer format***. Affirmative statements or narratives on the part of counsel are ***not allowed***. Similarly, questions that assume facts not in evidence or that begin with "Didn't you testify" or "You testified" or "I believe you testified" are usually inappropriate. Whatever the witness testified to, the jury has already heard, and such questions will usually violate Rule 403, Fed. R. Evid. Only after an inconsistent answer has been given is it permissible (if necessary) to remind the witness of this prior testimony. Otherwise, such matters should be reserved for the closing argument or summation.

Compound or leading questions should be avoided. Counsel are not to comment on the substance or validity of the witness' answer. All such comments should be reserved for summation.

It is not necessary to repeat the direct testimony during cross-examination. Don't waste time.

Before showing a document or other material to a witness which has not been received in evidence ***it should be first offered to opposing counsel.***

Where a party is insured, admonish all witnesses in advance not to mention insurance, claims adjusters, and related matters.

Admonish the witnesses to answer all questions responsively and not to volunteer information, particularly in sensitive areas where such answers could be prejudicial.

Traditional decorum and civility should be observed at all times. This means that rudeness or shouting are to be avoided, and witnesses should receive respect and common courtesy. Refrain from instructing the witness. If the witness requires any

further instruction, such as to speak louder or to answer responsively, or if, for any other reason, the answer needs to be repeated, direct the request to the Court. Remember that it is the Court, not the attorney, who instructs the witness to leave the stand.

Needless to say, food and drinks other than water, are inappropriate in the courtroom.

Opening Statement

Unless the case is unusually complex, parties will be limited to *fifteen minutes* in their opening statements. Counsel shall deliver their statement *from the lectern* provided for this purpose and avoid wandering about in the well.

An opening statement should be a concise representation to the jury of the *facts* that your side of the case expects to prove, or the position as to facts that the other side has undertaken to prove. It is not a place for a discussion of the law or an appeal to emotion or prejudice. The contemporaneous objection requirement applies to opening and closing statements.

Closing Argument

A closing argument should be *limited to the evidence* and the ultimate factual conclusions or inferences that counsel wishes to have the jury reach or reject. *Neither the prosecution nor the defense* may say anything to the jury implying that evidence supporting its position exists but has not been introduced in the trial.

The Court will explain its proposed jury charges in advance, to all counsel, as required by the Rules, before the closing arguments are given. *Leave the instructions for the Court.* Don't pick and choose from the instructions or get involved in their legal interpretation.

The Court reserves the right to comment on any improper or unfounded "red herring" argument made during summation, when the jury is charged. The Court usually reminds counsel the time remaining for argument. Counsel shall make their argument *from the lectern* provided for this purpose and avoid wandering about in the well.

Miscellaneous

The Court usually permits the jurors to select the foreperson; counsel should thus refrain from addressing juror number 1 as "Mr. Foreman" or "Madam Forewoman."

In a long trial, the Court may permit short interim summations. Counsel should attempt to agree with respect to whether such summations will be helpful to the factfinder.

The Court permits jurors to take notes and usually sends its written jury instructions into the jury room.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 19th day of January, 1999.


SALVADOR E. CASELLAS
United States District Judge